

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMAAR SEGAR.

CASE NO. C21-1526JLR

Plaintiff,

ORDER

V.

ALLSTATE FIRE AND
CASUALTY INSURANCE
COMPANY,

Defendant.

I. INTRODUCTION

Before the court are: (1) Plaintiff Jamaar Segar's motion to remand (Remand Mot. (Dkt. # 10)); and (2) Defendant Allstate Fire and Casualty Insurance Company's ("Allstate") partial motion to dismiss (MTD (Dkt. # 6); MTD Reply (Dkt. # 12)¹).

¹ Mr. Segar did not file a response to Allstate's partial motion to dismiss. (See generally Dkt.) The court considers his failure to respond as an admission that the motion has merit. Local Rules W.D. Wash. LCR 7(b)(2) ("[I]f a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit."); see

1 Allstate opposes Mr. Segar's motion to remand. (Remand Resp. (Dkt. # 13).²) The court
 2 has considered the motions, all submissions filed in support of and in opposition to the
 3 motions, the relevant portions of the record, and the applicable law. Being fully advised,³
 4 the court DENIES Mr. Segar's motion to remand and GRANTS Allstate's partial motion
 5 to dismiss.

6 **II. BACKGROUND**

7 On September 21, 2015, an underinsured motorist struck Mr. Segar's vehicle,
 8 injuring Mr. Segar and rendering his vehicle a total loss. (Compl. (Dkt. # 1-1)
 9 ¶¶ 3.1-3.4.) Although the motorist's liability carrier paid Mr. Segar the motorist's policy
 10 limits, he alleges that the motorist's \$25,000 policy limit was insufficient to fully
 11 compensate him for his alleged injuries and damages. (See *id.* ¶ 12.2.) Mr. Segar then
 12 filed a claim with Allstate seeking to recover underinsured motorist ("UIM") benefits
 13 under his automobile insurance policy (the "Policy") with Allstate. (See *id.* ¶¶ 1.2, 1.4,
 14 3.2, 3.8-3.9.) Mr. Segar's Policy provides for \$100,000 in underinsured motorist
 15 ("UIM") coverage. (See *id.* ¶¶ 1.2, 1.4.) Allstate, however, allegedly "disput[ed] the

16 _____
 17 *also Perrie v. OneWest Bank, FSB*, No. C11-6063BHS, 2012 WL 760911, at *1 (W.D. Wash.
 Mar. 7, 2012) (same).

18 ² Mr. Segar did not file a reply to Allstate's response to his motion to remand. (See
 19 generally Dkt.) The court considers his failure to respond as an admission that the arguments
 20 raised in Allstate's response have merit and an acknowledgment of the flaws in his motion to
 remand. Local Rules W.D. Wash. LCR 7(b)(2); *see also Peoples Bank v. P/C Ambassador of the*
Lake, No. C16-1403JLR, 2017 WL 368341, at *1 (W.D. Wash. Jan. 25, 2017) ("The court treats
 this failure to reply as an acknowledgement of the flaws in Mr. Ragusa's motion.").

21 ³ Neither party has requested oral argument (*see* MTD at 1; Remand Mot. at 1; Remand
 22 Resp. at 1), and the court finds that oral argument would not be helpful to its disposition of the
 motion. *See* Local Rules W.D. Wash. LCR 7(b)(4).

1 amount of damages [Mr. Segar] is entitled to and refus[ed] to make a reasonable UIM
 2 offer." (See *id.* ¶ 3.8.)

3 Mr. Segar commenced this action against Allstate in King County Superior Court
 4 on October 14, 2021. (See generally *id.*) He claims that Allstate breached the terms of
 5 the Policy by failing to pay him UIM benefits for the injuries that he sustained in the
 6 accident. (See *id.* ¶¶ 3.2, 3.8, 9.1-9.4.) In addition to his breach of contract claim, Mr.
 7 Segar also alleges that Allstate was negligent; that it breached its duty of good faith (*i.e.*,
 8 common law insurance bad faith) and its fiduciary duty; and that it violated the
 9 Washington Insurance Fair Conduct Act ("IFCA"), RCW 48.30.015, and the Washington
 10 Consumer Protection Act ("CPA"), ch. 19.86 RCW. (See *id.* ¶¶ 5.1-10.1.) He seeks
 11 insurance benefits under the Policy, as well as extra-contractual tort damages, treble
 12 damages, attorneys' fees, costs, estoppel, and declaratory/injunctive relief.⁴ (See *id.*
 13 ¶¶ 4.1, 5.2, 6.2, 7.3, 8.6, 9.4, 10.1, 11.1, 12.3, 13.1-13.6, 14.1-14.9.)

14 Allstate timely removed Mr. Segar's complaint to this court based on diversity
 15 subject matter jurisdiction. (See generally Not. of Removal (Dkt. # 1).) In its notice of
 16 removal, Allstate established that complete diversity exists between Mr. Segar, a citizen
 17 of Washington, and Allstate, a citizen of Delaware and Illinois. (See *id.* at 2-3; Compl.
 18 ¶ 1.1.) It also stated that the amount in controversy more likely than not exceeds the
 19 jurisdictional threshold of \$75,000 based on Mr. Segar's allegations that he is entitled to
 20 the full \$100,00 UIM policy limit, and his requests for treble damages and attorneys' fees

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⁴ Mr. Segar lists his requests for estoppel and declaratory/injunctive relief as independent
 causes of action. (See Compl. ¶¶ 11.1, 12.1-12.3.)

1 under the CPA and IFCA, extra-contractual tort damages, and declaratory and injunctive
 2 relief. (See Not. of Removal at 3-5.)

3 Allstate moved to dismiss all of Mr. Segar's claims except for his breach of
 4 contract claim on November 23, 2021 (see MTD at 1-2), and Mr. Segar filed a motion to
 5 remand this action back to state court on December 13, 2021 (see Remand Mot. at 1-2).

6 **III. ANALYSIS**

7 The court begins by discussing Mr. Segar's motion to remand before turning to its
 8 analysis of Allstate's partial motion to dismiss.

9 **A. Mr. Segar's Motion to Remand**

10 Mr. Segar moves to remand this action back to King County Superior Court,
 11 arguing that Allstate failed to meet its burden to establish that the amount in controversy
 12 exceeds the \$75,000 jurisdictional threshold. (See Remand Mot. at 1-2.) The court sets
 13 forth the relevant legal standard for motions to remand before turning to its analysis of
 14 Mr. Segar's motion.

15 1. Legal Standard for Motions to Remand

16 Removal of a civil action to federal district court is proper where the federal court
 17 would have original jurisdiction over the state court action. *See* 28 U.S.C. § 1441(a).
 18 District courts have original jurisdiction over an action with both complete diversity of
 19 citizenship among the parties and an amount in controversy exceeding \$75,000. *See* 28
 20 U.S.C. § 1332(a); *see also Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 679 (9th Cir.
 21 2006). Federal courts strictly construe the removal statute and must reject jurisdiction if
 22 there is any doubt as to the right of removal in the first instance. *See Hawaii ex rel. Louie*

1 *v. HSBC Bank Nev., N.A.*, 761 F.3d 1027, 1034 (9th Cir. 2014); *Gaus v. Miles, Inc.*, 980
 2 F.2d 564, 566 (9th Cir. 1992). Moreover, when a suit is initiated in state court, there is a
 3 strong presumption that the plaintiff has not claimed a sufficient amount to confer
 4 jurisdiction to a federal court. *Gaus*, 980 F.2d at 566. Thus, the defendant has the burden
 5 of establishing that removal is proper. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980
 6 (9th Cir. 2005), *as amended on denial of reh'g and reh'g en banc* (Feb. 13, 2006).

7 Mr. Segar does not dispute that there is complete diversity of citizenship between
 8 the parties. (*See generally* Remand Mot.) Thus, the only issue is whether the amount in
 9 controversy exceeds \$75,000. *See* 28 U.S.C. § 1332(a)(1).

10 When the plaintiff's requested damages are unclear from the face of the complaint,
 11 the defendant bears the burden of proving, by a preponderance of evidence, that the
 12 amount in controversy exceeds \$75,000. *See Singer v. State Farm Mut. Auto. Ins. Co.*,
 13 116 F.3d 373, 376 (9th Cir. 1997); *Gaus*, 980 F.2d at 566-67; 28 U.S.C. § 1446(c)(2)(B);
 14 *see also Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 701 (9th Cir. 2007)
 15 (affirming the defendant's preponderance of evidence burden when the complaint was
 16 unclear and did not specify a total amount in controversy). Under this burden, the
 17 defendant must provide evidence establishing that it is "more likely than not" that the
 18 amount in controversy exceeds the required amount. *See Sanchez v. Monumental Life*
 19 *Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996); *Abrego*, 443 F.3d at 683. Beyond the
 20 allegations in the pleadings, the defendant may present and the court may consider any
 21 additional "summary-judgment-type evidence relevant to the amount in controversy at
 22 the time of removal." *See Kroske*, 432 F.3d at 980; *Korn v. Polo Ralph Lauren Corp.*,

1 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (“A court may also consider supplemental
 2 evidence later proffered by the removing defendant, which was not originally included in
 3 the removal notice.”). In weighing the evidence, the court considers “real evidence and
 4 the reality of what is at stake in the litigation, using reasonable assumptions underlying
 5 the defendant’s theory of damages exposure.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d
 6 1193, 1198 (9th Cir. 2015).

7 “The amount in controversy includes all relief claimed at the time of removal to
 8 which the plaintiff would be entitled if [they] prevail[].” *Chavez v. JPMorgan Chase &*
 9 *Co.*, 888 F.3d 413, 414-18 (9th Cir. 2018) (stating that the “amount in controversy is
 10 determined by the complaint operative at the time of removal and encompasses all relief a
 11 court may grant on that complaint if the plaintiff is victorious”); *Lewis v. Verizon
 12 Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (stating that the amount in
 13 controversy is “simply an estimate of the total amount in dispute, not a prospective
 14 assessment of defendant’s liability”). In calculating the amount in controversy, the court
 15 “looks not only to the amount of damages in dispute, but also to attorney’s fees, costs,
 16 and statutory treble damages.” *J Bells LLC v. Sentinel Ins. Co. Ltd.*, No. C20-5820BJR,
 17 2020 WL 5905199, at *2 (W.D. Wash. Oct. 6, 2020) (citing *Chavez*, 888 F.3d at 414-15).

18 **2. Whether the Amount in Controversy is Satisfied**

19 In his complaint, Mr. Segar seeks: (1) “damages under his UIM coverage”; (2)
 20 treble damages under the CPA and IFCA; (3) extra-contractual general and special tort
 21 damages; (4) attorneys’ fees and costs under the CPA and IFCA; (5) punitive damages;
 22 and (6) declaratory and injunctive relief. (See Compl. ¶¶ 3.2, 4.1, 6.2, 7.3, 8.4, 8.6, 10.1,

1 11.1, 12.1-12.3, 13.1-13.6, 14.2-14.8.) Because Mr. Segar did not allege an exact dollar
 2 amount of damages, however, it is not facially apparent from the complaint that the
 3 jurisdictional amount in controversy is met. Therefore, Allstate must prove the amount in
 4 controversy exceeds \$75,000 by a preponderance of the evidence. *See Singer*, 116 F.3d
 5 at 376. After a review of the record, the court concludes that Allstate has met its burden.

6 In his motion to remand, Mr. Segar argues that Allstate has failed to carry its
 7 burden, in part, because his complaint does not plead the specific amount of UIM benefits
 8 that he seeks. (*See* Remand Mot. at 4-5 (acknowledging that the UIM policy limit is
 9 \$100,000, but declining to state how much of that limit he seeks to recover).) In
 10 opposition to Mr. Segar’s motion to remand, Allstate provides a copy of the demand
 11 letter Mr. Segar sent to Allstate in August 2017, in which he claimed that his damages to
 12 date totaled \$68,129.86 and demanded that Allstate pay him the full \$100,000 UIM
 13 policy limit, as evidence that the amount in controversy more likely than not exceeds
 14 \$75,000. (*See* Remand Resp. at 4-5; 1/3/22 Mead Decl. (Dkt. # 14) ¶ 3, Ex. A (“Segar
 15 Demand Letter”).)

16 The court treats Mr. Segar’s pre-litigation demand as relevant evidence of the
 17 damages that he seeks—namely, the full \$100,000 UIM policy limit.⁵ *See, e.g., Cohn v.*
 18 *Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (holding that a demand “is relevant

20 ⁵ As discussed below, even if the court were to treat the demand letter as evidence that
 21 Mr. Segar instead seeks to recover only \$68,129.86 under his UIM policy, his damages as of
 22 August 2017, Allstate would still able to establish that the amount in controversy more likely
 than not exceeds \$75,000 based on Mr. Segar’s requests for treble damages under the CPA and
 IFCA. (*See* Remand Resp. at 5-8); *see also infra* Section III.A.2.

1 evidence of the amount in controversy if it appears to reflect a reasonable estimate of the
 2 plaintiff's claim"); *Egal v. Geico Gen. Ins. Co.*, No. C14-1964RSM, 2015 WL 1632950,
 3 at *3-4 (W.D. Wash. Apr. 13, 2015) (considering plaintiff's demand letter when
 4 determining that the amount in controversy was satisfied); *Flores v. Safeway, Inc.*, No.
 5 C19-0825JCC, 2019 WL 4849488, at *3 (W.D. Wash. Oct. 1, 2019) ("To establish the
 6 amount in controversy, a defendant may point to many different types of evidence. . . . A
 7 particularly powerful form of evidence is the plaintiff's own statements about the
 8 damages they seek."). Mr. Segar's demand appears to reflect a reasonable estimate of his
 9 claims given that he commenced his lawsuit to recover UIM policy benefits that Allstate
 10 refused to pay him, as evidenced by the allegations in his complaint.⁶ (See Compl.
 11 ¶¶ 3.2, 3.8, 4.1, 13.1, 13.3.) While Mr. Segar tries to create the impression that the
 12 amount in controversy is not met, the court agrees with Allstate's contention that when
 13 the allegations in his complaint are combined with his pre-litigation demand—which
 14 claimed that he was owed \$100,000 in UIM benefits—the amount in controversy more
 15 likely than not exceeds \$75,000.⁷ (See Remand Resp. at 4-5.)
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18 ⁶ For example, in his complaint Mr. Segar states that: "[t]his action arises from
 19 Defendant ALLSTATE's refusal to make a reasonable offer to settle the Plaintiff's claim for
 20 damages under his UIM policy" (Compl. ¶ 3.2); he is "entitled to an award of damages under his
 21 UIM coverage for all economic and non-economic losses as provided by law" (*id.* ¶ 4.1); "he is
 22 entitled to fair and reasonable compensation under his UIM coverage with Defendant
 ALLSTATE" (*id.* ¶ 13.1); and "[b]y virtue of Defendant's breach of the insurance contract,
 Defendant ALLSTATE is liable for the full amount of Plaintiff's claims" (*id.* ¶ 13.3).

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 2 ⁷ Mr. Segar's failure to challenge this contention in reply (*see generally* Dkt.), which the
 3 court construes as an admission that the argument has merit, *see* Local Rules W.D. Wash. LCR
 4 7(b)(2), further bolsters the court's conclusion.

1 The court also agrees with Allstate's contention that Mr. Segar's requests for
 2 treble damages under the IFCA and CPA further increase the amount in controversy
 3 beyond \$75,000. (*See id.* at 5-8; Compl. ¶¶ 8.6, 13.6, 14.4-14.5.) Under the CPA treble
 4 damages may be awarded up to \$25,000 per violation, *see* RCW 19.86.090, and under the
 5 IFCA treble damages may be awarded in "an amount not to exceed three times the actual
 6 damages," *see* RCW 48.30.015(2). Because Mr. Segar explicitly requests treble damages
 7 under the IFCA and CPA, the court applies his requests for treble damages to the
 8 estimated \$100,000 in damages under the UIM policy, *see supra*, and concludes that at
 9 least \$325,000—\$100,000 trebled plus \$25,000 for a CPA violation—is at controversy in
 10 this matter. *See, e.g., Egal*, 2015 WL 1632950, at *4 (applying the plaintiff's request for
 11 treble damages to the plaintiff's requested relief in their demand letter of policy limits of
 12 \$50,000 and holding that the amount in controversy exceeded \$150,000).

13 Mr. Segar nevertheless argues that the prospect of receiving punitive damages⁸ is
 14 too speculative to satisfy Allstate's burden of establishing jurisdiction. (*See* Remand
 15 Mot. at 6-7.) The court disagrees. Where plaintiffs explicitly request treble damages
 16 under the IFCA and CPA in the complaint, as Mr. Segar has here, courts apply the treble
 17 damages request to calculate the amount in controversy. *See, e.g., Chabner v. United*
 18 *Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 (9th Cir. 2000) (permitting calculation of
 19 treble damages authorized by state statute when determining the amount in controversy);

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⁸ While Mr. Segar refers to treble damages as "punitive damages" (*see* Remand Mot. at
 22 6-7), treble damages are not punitive damages; rather, they are statutory liquidated damages, *see*
 RCW 19.86.090; RCW 48.30.015(2).

1 *Wilson v. Geico Indem. Co.*, No. C18-0226RAJ, 2018 WL 3594474, at *2-3 (W.D. Wash.
 2 July 26, 2018) (denying motion to remand where plaintiff's request for treble damages
 3 under the CPA and IFCA increased amount in controversy above jurisdictional
 4 threshold); *Lim v. Nat'l Gen. Ins. Co.*, No. C15-0383RSL, 2015 WL 12025326, at *2
 5 (W.D. Wash. Apr. 30, 2015) (denying motion to remand after applying the plaintiff's
 6 request for treble damages under the IFCA to the plaintiff's requested relief of her UIM
 7 policy limits of \$50,000). Thus, Mr. Segar's explicit requests for awards of treble
 8 damages under the CPA and IFCA is sufficient to place this enhanced amount of money
 9 damages in controversy.

10 Accordingly, the court concludes that Allstate has sufficiently established that the
 11 amount in controversy exceeds \$75,000 based on Mr. Segar's allegations, his
 12 pre-litigation demand for the full \$100,000 UIM policy limit, and his requests for treble
 13 damages under the CPA and IFCA.⁹ Because the parties are citizens of different states
 14 and the amount in controversy more likely than not exceeds \$75,000, the court has
 15 subject matter jurisdiction over this matter and DENIES Mr. Segar's motion to remand.

16 **B. Allstate's Partial Motion to Dismiss**

17 Allstate moves to dismiss Mr. Segar's bad faith, breach of fiduciary duty,
 18 negligence, IFCA, CPA, estoppel, and declaratory judgment/injunctive relief claims
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20 ⁹ Allstate also argues that Mr. Segar's requests for extra-contractual special and general
 21 tort damages, attorneys' fees under the CPA and IFCA, and declaratory/injunctive relief further
 22 increase the amount in controversy. (See Remand Resp. at 8-10.) However, even without
 22 considering these other requests, the jurisdictional threshold amount is reached, so the court need
 22 not reach these arguments.

1 under Federal Rule of Civil Procedure 12(b)(6). (See MTD at 2.¹⁰) The court begins by
 2 addressing the legal standard for motions to dismiss pursuant to Rule 12(b)(6) before
 3 turning to its analysis of Mr. Segar's claims.

4 1. Legal Standard for Motions to Dismiss under Federal Rule of Civil Procedure
 5 12(b)(6)

6 Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of a complaint for
 7 “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “To
 8 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
 9 as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
 10 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007));
 11 *Wyler Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998)
 12 (stating that the court must accept all well-pleaded facts as true). A claim is facially
 13 plausible “when the pleaded factual content allows the court to draw the reasonable
 14 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.
 15 While “detailed factual allegations” are not required, a complaint must include “more
 16 than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* The court is
 17 not required “to accept as true allegations that are merely conclusory, unwarranted
 18 deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266
 19 F.3d 979, 988 (9th Cir. 2001). When considering a motion to dismiss under Rule
 20 12(b)(6), the court construes the complaint in the light most favorable to the nonmoving
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22 ¹⁰ Allstate does not seek dismissal of Mr. Segar's breach of contract claim at this time.
 (See MTD at 2.)

1 party. *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir.
 2 2005).

3 Under Rule 12(b)(6), dismissal can be based on “the lack of a cognizable legal
 4 theory or the absence of sufficient facts alleged under a cognizable legal theory.”
 5 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). Further, dismissal
 6 is proper on grounds that a claim is barred by the applicable statute of limitations where
 7 the running of the limitations period is apparent on the face of the complaint. *See Jones*
 8 *v. Block*, 549 U.S. 199, 215 (2007) (“If the allegations . . . show that relief is barred by
 9 the applicable statute of limitations, the complaint is subject to dismissal for failure to
 10 state a claim.”); *Estate of Blue v. Cnty. of L.A.*, 120 F.3d 982, 984 (9th Cir. 1997) (stating
 11 that a statute of limitation question may be decided on a motion to dismiss where all facts
 12 necessary to decide the issue are in record).

13 Although the scope of review on a motion to dismiss for failure to state a claim is
 14 generally limited to the complaint, a court may consider evidence on which the complaint
 15 “necessarily relies” if: (1) the complaint refers to the document; (2) the document is
 16 central to the plaintiff’s claim; and (3) no party questions the authenticity of the
 17 document. *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010) (quoting
 18 *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)); *Knievel v. ESPN*, 393 F.3d 1068,
 19 1076 (9th Cir. 2005). Rachelle Mead, the Allstate claim adjuster assigned to Mr. Segar’s
 20 UIM claim, filed a declaration in support of Allstate’s motion to dismiss, which includes
 21 as exhibits: (1) her October 9, 2017 email to Mr. Segar’s counsel following up on their
 22 telephone call and confirming her evaluation of Mr. Segar’s UIM claim; and (2)

1 Allstate's October 31, 2017 letter to Mr. Segar's counsel denying his UIM claim. (See
 2 11/23/21 Mead Decl. (Dkt. # 7) ¶¶ 3-5, Exs. A ("10/9/17 Email") & B ("10/31/17
 3 Letter").) The court may properly consider these exhibits in ruling on Allstate's motion
 4 to dismiss because they are referenced in Mr. Segar's complaint and form the basis of
 5 Mr. Segar's claims, which arise from allegations that Allstate mishandled his claim and
 6 improperly denied him UIM benefits under the Policy. (See Compl. ¶¶ 3.2, 3.8-3.11,
 7 12.1 (alleging Allstate wrongfully denied and mishandled Mr. Segar's UIM claim and
 8 wrongfully attempted to offset UIM coverage with Personal Injury Protection ("PIP")
 9 payments)); *see also Maurice v. Allstate Ins. Co.*, No. C19-1837JCC-DWC, 2019 WL
 10 7758878, at *1 n.1 (W.D. Wash. Dec. 19, 2019) (considering insurer's letter denying
 11 plaintiff's UIM claim on a Rule 12(b)(6) motion to dismiss), *report and recommendation*
 12 *adopted*, 2020 WL 433832 (W.D. Wash. Jan. 28, 2020).

13 2. Whether Mr. Segar's Claims are Subject to Dismissal

14 Allstate argues that Mr. Segar's bad faith, breach of fiduciary duty, negligence
 15 (collectively, his "extra-contractual claims"), IFCA, and CPA claims should be dismissed
 16 with prejudice because each claim is barred by the applicable statutes of limitation.¹¹
 17 (See MTD at 2.) Allstate also seeks dismissal of his estoppel and "declaratory
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 21 ¹¹ In its motion, Allstate makes additional arguments as to why Mr. Segar's
 22 extra-contractual claims and his IFCA claim otherwise fail to state a plausible claim for relief.
 23 (See MTD at 4-8.) Because the court's holding with respect to the timeliness of these claims is
 24 dispositive, *see infra* Sections III.B.2.a-b, the court does not discuss Allstate's additional
 25 arguments.

1 judgment/injunctive relief" claims because, it asserts, they "are not cognizable here."

2 (See *id.*) The court will now address each claim in turn.

3 a. *Extra-Contractual Claims*

4 Under Washington law, claims for bad faith under an insurance contract sound in
5 tort and are subject to a three-year statute of limitations. *Trumbull v. Am. Sec. Ins. Co.*,
6 No. C17-0125RAJ, 2018 WL 3769797, at *2 (W.D. Wash. Aug. 9, 2018) (first citing
7 RCW 4.16.080(2); and then citing *Moratti v. Farmers Ins. Co. of Wash.*, 254 P.3d 939,
8 942 (Wash. Ct. App. 2011)). Breach of fiduciary duty and negligence claims are likewise
9 subject to a three-year statute of limitations. RCW 4.16.080(2); *see also Kazman v. Land*
10 *Title Co.*, No. C11-1210RSM, 2014 WL 128061, at *6 (W.D. Wash. Jan. 13, 2014);
11 *Affiliated FM Ins. Co. v. LTK Consulting Servs., Inc.*, 15 F. Supp. 3d 1116, 1128 n.5
12 (W.D. Wash. 2014). The limitations period begins to run when the cause of action
13 accrues, which is when "the party has the right to apply to a court for relief." *1000 Va.*
14 *Ltd. P'ship v. Vertecs Corp.*, 146 P.3d 423, 428 (Wash. 2006). Typically, "an action
15 accrues immediately when the wrongful act occurs . . ." *Id.* (noting that under
16 Washington's discovery rule of accrual, the action accrues when the plaintiff knew or
17 should have known "of the salient facts underlying the elements of the cause of action"
18 (citing *Green v. A.P.C.*, 960 P.2d 912 (Wash. 1998)). An insured's bad faith claim
19 against his insurer accrues at the time his claim for benefits is "initially denied." *Lenk v.*
20 *Life Ins. Co. of N. Am.*, No. CV-10-5018-LRS, 2010 WL 5173207, at *2 (E.D. Wash.
21 Dec. 13, 2010) (concluding that the statute of limitations began to run on the plaintiff's
22 breach of fiduciary duty and negligence (bad faith) claims when his disability benefits

1 claim was initially denied by the defendant); *Dees v. Allstate Ins. Co.*, 933 F. Supp. 2d
2 1299, 1306-07 (W.D. Wash. 2013) (stating that a tort claim arising from the insurer's
3 handling of a PIP claim accrues when the insurer denied coverage); *Stedman v.*
4 *Progressive Direct Ins. Co.*, No. C18-1254RSL, 2019 WL 1013456, at *2 (W.D. Wash.
5 Mar. 4, 2019) (concluding that the statute of limitations on the plaintiff's
6 extra-contractual claims accrued when the plaintiff became aware of the conduct giving
7 rise to her claims, which was the day she received notice that her PIP benefits had been
8 terminated).

9 While Mr. Segar's extra-contractual claims arise from Allstate's allegedly
10 improper denial of his request for UIM benefits under the Policy and refusal to make a
11 reasonable offer to settle his UIM claim (see Compl. ¶¶ 3.2, 3.8-3.12, 6.1-6.2, 7.1-7.3,
12 10.1), the complaint is devoid of any dates related to Allstate's denial of his claim (see
13 generally *id.*). As noted above, however, in deciding Allstate's motion the court may
14 properly consider the two exhibits that Allstate submitted regarding the timing of its
15 denial of Mr. Segar's UIM claim. *See supra* Section III.B.1 (first citing 10/9/17 Email;
16 and then citing 10/31/17 Letter). Allstate argues that its October 9, 2017 email, which
17 informed Mr. Segar that he had been fully compensated for his accident-related damages
18 and it would not be paying him any UIM benefits under the Policy, serves as its first
19 denial of Mr. Segar's UIM claim. (See MTD at 2-5 (citing 10/9/17 Email) (stating that
20 the October 31 letter was a reiteration of its position and denial of Mr. Segar's UIM
21 claim).) Because Mr. Segar did not challenge Allstate's argument regarding the date that
22 his claim was first denied, the court deems Mr. Segar's failure to respond as an admission

1 that the argument has merit and will treat October 9, 2017, as the date when Allstate first
 2 allegedly improperly denied Mr. Segar's UIM claim. (See Dkt. (indicating that Mr. Segar
 3 did not respond to Allstate's motion)); Local Rules W.D. Wash. LCR 7(b)(2); *see also*
 4 *Perrie*, 2012 WL 760911, at *1 (construing the plaintiff's failure to respond to the motion
 5 as an admission that the motion has merit); *Nieuwejaar v. Nationstar Mortg., LLC*, No.
 6 C15-1663JLR, 2016 WL 1436123, at *4 (W.D. Wash. Apr. 12, 2016) ("The court
 7 construes Plaintiffs' silence regarding this argument as an admission of its merit, and
 8 declines to consider the issue further."), *aff'd*, 700 F. App'x 723 (9th Cir. 2017).

9 Thus, the three-year statutes of limitation for Mr. Segar's bad faith, breach of
 10 fiduciary duty, and negligence claims began to run on October 9, 2017, which is when
 11 Mr. Segar knew or should have known that Allstate would not be paying him any UIM
 12 benefits under the Policy. (See 10/9/17 Email); *Lenk*, 2010 WL 5173207, at *2; *see also*
 13 *Maurice*, 2019 WL 7758878, at *2 (stating that the plaintiff knew or should have known
 14 of the denial of her UIM claim, which formed the basis of the action, when Allstate sent a
 15 letter notifying the plaintiff that her claim was valued at zero). Mr. Segar, however, did
 16 not file this lawsuit until October 14, 2021—over four years after Allstate initially denied
 17 his demand for UIM benefits under the Policy. (See generally Compl.) Accordingly, Mr.
 18 Segar's bad faith, breach of fiduciary duty, and negligence claims are time-barred and the
 19 court GRANTS Allstate's partial motion to dismiss with respect to these claims.

20 b. *IFCA Claim*

21 IFCA claims are subject to a three-year statute of limitations, which begins to run
 22 when the insurer first extends "its allegedly unreasonable settlement offer or

1 unreasonably denies coverage.” *Trumbull*, 2018 WL 3769797, at *2 (citing *Ward v.*
 2 *Stonebridge Life Ins. Co.*, No. C13-5092RBL, 2013 WL 3155347, at *5 (W.D. Wash.
 3 June 21, 2013)); *Walker v. Metro. Prop. & Cas. Ins. Co.*, No. C12-0173JLR, 2013 WL
 4 942554, at *5 (W.D. Wash. Mar. 8, 2013) (concluding that plaintiffs’ IFCA claim
 5 accrued on the date their insurer rejected their contents inventory list, which included
 6 requested values for personal property damaged in a house fire).

7 As stated above, Allstate first allegedly unreasonably denied coverage of Mr.
 8 Segar’s UIM claim related to the 2015 automobile accident on October 9, 2017. *See*
 9 *supra* Section III.B.2.a. Mr. Segar filed his complaint in state court on October 14, 2021
 10 (*see generally* Compl.)—more than three years after Allstate first extended “its allegedly
 11 unreasonable settlement offer or unreasonably denie[d] coverage.”¹² *See Trumbull*, 2018
 12 WL 3769797, at *2. Accordingly, Mr. Segar’s IFCA claim is time-barred and the court
 13 GRANTS Allstate’s partial motion to dismiss with respect to this claim.

14 c. *CPA Claim*

15 A CPA claim is “forever barred unless commenced within four years after the
 16 cause of action accrues.” RCW 19.86.120; *see also Dees*, 933 F. Supp. 2d at 1309. A
 17 CPA “cause of action accrues and the statute of limitations begins to run when a party has
 18

19 ¹² Because Mr. Segar provided notice to Allstate and the insurance commissioner twenty
 20 days before bringing a claim under the IFCA, as required by RCW 48.30.015(8)(a), the statute of
 21 limitations for his IFCA claim was tolled during that twenty-day period of time. (*See* Compl.
 22 ¶ 3.14); RCW 48.30.015(8)(d); *see also Mayuga Living Tr. v. Sentinel Ins. Co., Ltd.*, No.
 C19-5047TOR, 2019 WL 5258050, at *2 (E.D. Wash. Aug. 29, 2019). However, even giving
 Mr. Segar the benefit of that 20-day tolling period, his IFCA claim is still time-barred because it
 was filed more than three years and 20 days after the statute of limitations began to run. (*See*
 Compl.; 10/9/17 Email); *Trumbull*, 2018 WL 3769797, at *2.

1 the right to apply to a court for relief.” *Shepard v. Holmes*, 345 P.3d 786, 790 (Wash. Ct.
 2 App. 2014) (quoting *O’Neil v. Estate of Murtha*, 947 P.2d 1252, 1254 (Wash. Ct. App.
 3 1997)).

4 As with his other extra-contractual claims, Mr. Segar’s CPA claim arises out of
 5 Allstate’s allegedly unreasonable handling and denial of his claim for coverage and
 6 payment of UIM benefits under the Policy. (See Compl. ¶¶ 3.2, 3.8-3.12, 8.1-8.3.) Once
 7 Allstate first notified Mr. Segar that it would not be paying him any UIM benefits under
 8 the Policy on October 9, 2017, *see supra* Section III.B.2.a, the statute of limitations for
 9 his CPA claim began to run. The four-year statute of limitations expired on October 9,
 10 2021—five days before Mr. Segar filed this lawsuit (*see generally* Compl.). Thus, Mr.
 11 Segar’s CPA claim is time-barred and the court GRANTS Allstate’s partial motion to
 12 dismiss with respect to this claim.

13 d. *Estoppel Claim*

14 In his complaint, Mr. Segar dedicates one of his causes of action to a claim
 15 alleging that Allstate should be estopped from denying or limiting coverage under the
 16 Policy. (See Compl. ¶ 11.1 (noting that this claim, like his others, arises out of Allstate’s
 17 allegedly wrongful denial and mishandling of his UIM claim).) Coverage by estoppel,
 18 however, is not a separate cause of action; instead, it is “a remedy available to plaintiffs
 19 in insurer bad faith actions in certain contexts.” *Crowthers v. Travelers Indem. Co.*, No.
 20 C16-0606RSL, 2016 WL 5944583, at *4 (W.D. Wash. Oct. 13, 2016); *see also*
 21 *Graham-Bingham Irrevocable Tr. v. John Hancock Life Ins. Co. USA*, 827 F. Supp. 2d
 22 1275, 1288 (W.D. Wash. 2011) (noting that coverage by estoppel is a possible remedy in

1 the context of third-party bad faith claims, but that “Washington law is clear that
 2 coverage by estoppel may not be imposed [in the first-party context]” (first citing *Kirk v.*
 3 *Mt. Airy Ins. Co.*, 951 P.2d 1124, 1127-28 (Wash. 1998); then citing *Safeco Ins. Co. v.*
 4 *Butler*, 823 P.2d 499, 504-06 (Wash. 1992); and then citing *Coventry Assocs. v. Am.*
 5 *States Ins. Co.*, 961 P.2d 933, 939-40 (Wash. 1998))).

6 As explained above, Mr. Segar’s bad faith claim fails as a matter of law because it
 7 is time-barred. *See supra* Section III.B.2.a. However, even if his bad faith claim were
 8 successful, he would not be entitled to coverage by estoppel because this remedy is not
 9 available to first-party claimants who assert a right to payment as a covered person under
 10 an insurance policy. *See Dees*, 933 F. Supp. 2d at 1309; RCW 48.30.015(4); *see also*
 11 *Crowthers*, 2016 WL 5944583, at *4. Mr. Segar’s estoppel claim therefore fails to state a
 12 cognizable claim for relief because coverage by estoppel is not an independent cause of
 13 action and the relief he seeks is unavailable in this context. Accordingly, the court
 14 GRANTS Allstate’s partial motion to dismiss with respect to this claim.

15 *e. Declaratory/Injunctive Relief Claim*

16 Mr. Segar’s complaint also contains a cause of action for “declaratory/injunctive
 17 relief,” which seeks an order declaring that Allstate may not offset his UIM coverage
 18 with PIP payments; that he has not been fully compensated for his alleged injuries; and
 19 that he is entitled to UIM benefits. (See Compl. ¶¶ 12.1-12.3.) “Requests for declaratory
 20 judgment orders that merely impose the remedies provided for in other claims are
 21 duplicative and may be dismissed on that basis”; declaratory relief is not cognizable as an
 22 independent cause of action in such circumstances. *See Fosmire v. Progressive Max Ins.*

1 | *Co.*, No. C10-5291JLR, 2010 WL 3489595, at *5 (W.D. Wash. Aug. 31, 2010)
 2 | (dismissing insured's declaratory judgment claim as duplicative of his breach of contract
 3 | and CPA claims); *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007) ("To the
 4 | extent [plaintiff] seeks a declaration of defendants' liability for damages sought for his
 5 | other causes of action, the claim is merely duplicative and was properly dismissed.").
 6 | Further, the court may dismiss a plaintiff's stand-alone claim for injunctive relief because
 7 | injunctive relief is merely a remedy for an underlying cause of action, not a cognizable
 8 | separate cause of action. *Kwai Ling Chan v. Chase Home Loans Inc.*, No. C12-0273JLR,
 9 | 2012 WL 1252649, at *3 (W.D. Wash. Apr. 13, 2012) ("It is well settled that a claim for
 10 | 'injunctive relief' standing alone is not a cause of action.").

11 | Mr. Segar's declaratory judgment/injunctive relief claim is improperly pleaded as
 12 | an independent cause of action and, with respect to his request for a declaratory
 13 | judgment, merely duplicates his breach of contract or CPA claims because it requests the
 14 | same kind of relief that may be sought in connection with those claims. *See Fosmire*,
 15 | 2010 WL 3489595, at *5; *Chan*, 2012 WL 1252649, at *3-4. Because Mr. Segar's
 16 | declaratory/injunctive relief claim fails to state a plausible claim for relief, the court
 17 | GRANTS Allstate's partial motion to dismiss with respect to this claim.¹³

18 //

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 22 |¹³ If Mr. Segar eventually prevails on an independent claim, "the court will necessarily
 22 | render a judgment setting forth as such and providing appropriate remedies." *See Chan*, 2012
 22 | WL 1252649, at *4. Similarly, if injunctive relief is proper, "it will be because [he] prevails, or
 22 | has met the necessary test for such relief under Federal Rule of Civil Procedure 65 on an
 22 | independent cause of action." *Id.*

1 3. Leave to Amend

2 As a general rule, when a court grants a motion to dismiss, the court should
 3 dismiss the complaint with leave to amend. *See Eminence Capital, LLC v. Aspeon, Inc.*,
 4 316 F.3d 1048, 1051-52 (9th Cir. 2003) (citing Fed. R. Civ. P. 15(a)). In determining
 5 whether dismissal without leave to amend is appropriate, courts consider such factors as
 6 undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to
 7 cure deficiencies by amendments previously allowed, undue prejudice to the opposing
 8 party by virtue of allowance of the amendment, and futility of amendment. *Foman v.*
 9 *Davis*, 371 U.S. 178, 182 (1962); *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522,
 10 532 (9th Cir. 2008).

11 In this case, the court denies leave to amend because it would be futile. *See, e.g.*,
 12 *Platt Elec. Supply, Inc. v. EOFP Elec., Inc.*, 522 F.3d 1049, 1060 (9th Cir. 2008) (finding
 13 amendment futile where claims were barred by the applicable statute of limitations);
 14 *Chan*, 2012 WL 1252649, at *4 (dismissing, without leave to amend, insured's
 15 declaratory relief, injunctive relief, and rescission claims because they were not
 16 cognizable independent causes of action). Federal courts consider the failure to respond
 17 to a motion to dismiss a claim to constitute a waiver of the claim at issue. *See Galaviz v.*
 18 *Fed. Bureau of Investigation*, No. C19-1611JLR, 2020 WL 208044, at *4 (W.D. Wash.
 19 Jan. 14, 2020) (denying leave to amend in light of the plaintiff's abandonment of his
 20 claims through his failure to respond to the defendant's motion to dismiss); *Prieto v. Fed.*
 21 *Home Loan Mortg. Corp.*, No. EDCV 14-01385-CJC, 2014 WL 4257860, at *2 (C.D.
 22 Cal. Aug. 28, 2014) ("As [the plaintiffs] have failed to respond to [the defendants']

1 motion to dismiss, and have not provided any indication in their Complaint that its
2 deficiencies can be remedied, the Court finds that granting leave to amend the Complaint
3 would be futile.”). Because Mr. Segar has abandoned his claims by failing to respond to
4 Allstate’s motion to dismiss and has not provided any indication that the deficiencies in
5 his complaint discussed above can be remedied, the court DENIES leave to amend.

6 **IV. CONCLUSION**

7 For the reasons stated above, the court DENIES Mr. Segar’s motion to remand
8 (Dkt. # 10). Further, the court GRANTS Allstate’s partial motion to dismiss (Dkt. # 6)
9 and DISMISSES Mr. Segar’s breach of the duty of good faith, breach of fiduciary duty,
10 negligence, IFCA, CPA, estoppel, and declaratory/injunctive relief claims WITH
11 PREJUDICE and WITHOUT LEAVE TO AMEND.

12 Dated this 11th day of January, 2022.

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15 JAMES L. ROBART
16 United States District Judge
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